

THE CHANCELLOR :

All of the questions raised by the exception to the report of the Auditor in this case were considered, and the views of the Court expressed upon them in the opinion above; and the cause would have been referred to the Auditor to state an account accordingly, but for the interposition of two petitions, which were then depending, the hearing of which was postponed by consent of counsel. One of these petitions, that filed by William Mason, Sen., and William Mason, Jr., has been dismissed by the petitioners themselves, and is of course now out of the way; and upon that filed by Adam and William Denmead on the 31st of January last, counsel have been heard.

The nature of the claim of the Bank of Baltimore, and its title to be paid out of the proceeds of the sales made by the trustees under the decree in this case, has been fully considered, and need not now be examined. The Bank became the purchaser of the property mortgaged to secure its claim in the month of July, 1851, and subsequently, in November of the same year, sold the same to the Messrs. Mason for the price which it gave at the trustee's sale, to which was to be added the insurance and other charges paid by the Bank, amounting to little upwards of \$1,400.

The Messrs. Mason have paid a part of this purchase-money, but a considerable portion remains unpaid, and the Bank retains the title to the property under the mortgage, and under the purchase made by it at the sale of the trustees as its only security. The nature of the contract between the Bank and the Messrs. Mason, and all that is material to know in relation to the transaction between them, will be found in the deposition of Mr. Jamieson examined by the petitioners, the Messrs. Denmead.

It is urged on the part of the petitioners, that under these circumstances it is not competent to the Messrs. Mason to hold the machinery, which has been decided to be a fixture, and to constitute a part of the mortgage security, as against the petitioners who made it and put it into the building; that,